



A BILL FOR AN ORDINANCE

RELATING TO LEASEHOLD CONVERSION.

BE IT ORDAINED by the People of the City and County of Honolulu:

SECTION 1. Findings and Purpose.

The council finds that:

Since the enactment of Chapter 38, Revised Ordinances of Honolulu 1990 ("Chapter 38"), the issue of mandatory leasehold conversion has been a highly contentious issue that has divided the community.

The council understands that the use of eminent domain should not be taken lightly and must be justified by a valid public purpose. Section 3-110 of the Revised Charter of the City and County of Honolulu ("Charter") states: "The council shall by resolution determine and declare the necessity of taking property for public purposes, describing the property and stating the uses to which it shall be devoted." Article I, Section 20 of the Hawaii Constitution also states that private property shall not be taken for public use without just compensation. Thus, the exercise of eminent domain must be supported by (1) a valid public purpose and (2) just compensation. Under Hawaii law, the council has the discretion whether or not to exercise the power of eminent domain. The city has always taken the position that the council has the ultimate power to condemn.

The public purposes of Chapter 38 were set forth in detail in Ordinance 91-95. According to Ordinance 91-95, the purpose of Chapter 38 was to provide affordable housing and to strengthen the economy through fee ownership. Ordinance 91-95 lists "runaway land prices," "shortage of fee simple residential condominiums," "artificial inflation of land values," "lessees forced to accept long-term leases . . . which contain terms and conditions which are financially disadvantageous to them," "land values, artificially inflated by concentrated or single ownership," and "potential for economic instability and disruption on Oahu" as public purposes furthered by Chapter 38.

The council finds that mandatory conversion of multi-family residential leaseholds under Chapter 38 is no longer needed to assuage the social and economic problems mentioned in Ordinance 91-95 and, therefore, no longer advances a public purpose for which the city should exercise its extraordinary powers of condemnation. The social and economic problems listed as the public purposes furthered by Chapter 38 do not exist today to the same extent as they may have existed in 1991.



A BILL FOR AN ORDINANCE

The council further finds that a lessee purchasing a residential leasehold unit knew or should have known about the negative aspects of the lease prior to the purchase. Since 1990, such a lessee should have received a copy of the underlying lease. Since 1991, the lessee should have received a simplified disclosure of the salient terms of the lease agreement, including but not limited to, the remaining term of the lease, the rent renegotiation dates, the potential for significant increases in renegotiated rents, and the surrender clause.

In addition, it is a fundamental principle that the power to enact necessarily implies the power to repeal and one legislature cannot be limited or bound by the actions of a previous one. Thus, the council has the right to make an independent decision whether to repeal the law entirely.

Finally, "there is no vested right in a public law which is not in the nature of a private grant, and however beneficial a statute may be to a particular person or however injuriously the repeal may affect him, the legislature has the right to abrogate it. . . . No person has a vested interest in any law or legislative policy which entitles him to have it remain unaltered for his benefit." *In re Application of Herrick*, 93 Hawai'i 329, 338 (1996).

Based on the foregoing findings, the council believes and concludes that Chapter 38 no longer serves a public purpose and should be repealed.

Thus, the purpose of this ordinance is to repeal Chapter 38, Revised Ordinances of Honolulu 1990, concerning leasehold conversion.

SECTION 2. Chapter 38 ("Residential Condominium, Cooperative Housing and Residential Planned Development Leasehold Conversion"), Revised Ordinances of Honolulu 1990, is repealed.

SECTION 3. (a) This ordinance shall not affect any eminent domain proceeding for the acquisition of units validly designated in projects, the condemnation of which units was approved by the council by resolution before the effective date of this ordinance. Such an eminent domain proceeding may be instituted or, if already instituted, continued after the effective date of this ordinance in accordance with Chapter 38, ROH, as existing on the day before the effective date of this ordinance. "Development" means the same as defined under Section 38-1.2, ROH, on the day before the effective date of this ordinance. "Valid designation" means a designation of specific units in a development for leasehold conversion and subsequent approval for condemnation by the council that complied with Chapter 38, ROH, as existing on the



CITY COUNCIL

CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 05 - 001

BILL 53 (2004), CD1, FD1

A BILL FOR AN ORDINANCE

day before the effective date of this ordinance and construed by the Hawaii Supreme Court in Coon v. City and County of Honolulu, 98 Haw. 233, 47 P.3d 348 (2002).

(b) Any designation of a development for leasehold conversion shall be invalid on the effective date of this ordinance if the council did not authorize before the effective date of this ordinance the eminent domain proceeding to acquire all or a portion of the leased fee interests to the development.

SECTION 4. This ordinance shall not affect any reimbursement for actual out-of-pocket expenses that may be owed a fee owner, lessor, or legal and equitable owner of a designated development pursuant to Section 38-5.2, ROH, for the failure by the city, within 12 months of the designation, to acquire the applicable leased fee interests to the development or institute eminent domain proceedings to acquire such interests. Any entitlement to reimbursement shall be subject to Chapter 38, ROH, including Section 38-5.2, ROH, as existing on the day before the effective date of this ordinance. This section shall apply whether the expiration of the 12-month period occurs prior to, on, or after the effective date of this ordinance. This section shall also apply to any development, the designation for which is invalidated as a result of Section 3(b) of this ordinance before the expiration of the 12-month period of Section 38-5.2, ROH.



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CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII

ORDINANCE 05 - 001

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A BILL FOR AN ORDINANCE

SECTION 5. This ordinance shall take effect upon its approval.

INTRODUCED BY:

Mike Gabbard

DATE OF INTRODUCTION:

August 2, 2004

Honolulu, Hawaii

Councilmembers

APPROVED AS TO FORM AND LEGALITY:

Don S. Kitoaka

Deputy Corporation Counsel

APPROVED this 9th day of February, 2005.

Mufi Hannemann

MUFI HANNE MANN, Mayor
City and County of Honolulu

CITY COUNCIL
CITY AND COUNTY OF HONOLULU
HONOLULU, HAWAII
C E R T I F I C A T E

ORDINANCE **05-001**

BILL **53 (2004)**

Introduced: 8/2/04 By: MIKE GABBARD

Committee: BUDGET, EXECUTIVE
MATTERS, AS
CONSECUTIVE
REFERRAL

Title: A BILL FOR AN ORDINANCE RELATING TO LEASEHOLD CONVERSION

Links: [Bill 53 \(2004\)](#)
[Bill 53 \(2004\), CD1](#)
[CR-400](#)
[CR-474](#)
[Related Communications](#)

Council	8/11/04	Bill passed first reading and referred to Committee on Budget, Committee on Executive Matters as a consecutive referral. Cachola Y Dela Cruz Y Djou..... N Gabbard Y Garcia Y Kobayashi Y Marshall Y Okino..... N Tam Y
Budget	9/14/04	Bill deferred in Budget Committee.
Budget	9/29/04	CR-400 - Bill referred to Executive Matters Committee pursuant to consecutive referral.
Council	10/13/04	CR-400 adopted. Cachola Y Dela Cruz Y Djou..... Y Gabbard Y Garcia Y Kobayashi Y Marshall Y Okino..... Y Tam Y
EM	10/21/04	CR-474 – Bill reported out of committee for passage on second reading and scheduling of a public hearing.
Publish	10/30/04	Public hearing notice published in the Honolulu Star-Bulletin.
Council/ Public Hearing	11/10/04	(1) Bill 53, Proposed FD1, failed to be amended by the following votes: Ayes: Djou, Marshall, Okino. Noes: Cachola, Dela Cruz, Gabbard, Garcia, Kobayashi, Tam. (2) Bill passed second reading, CR-474 adopted, public hearing closed, and referred to Executive Matters Committee. Cachola Y Dela Cruz Y Djou..... N Gabbard Y Garcia Y Kobayashi Y Marshall N Okino..... N Tam Y
Publish	11/19/04	Second reading notice published in the Honolulu Star-Bulletin.
Executive Matters	1/13/05	CR-32 (2005) – Bill reported out of committee for passage on third reading as amended in CD1 form.
Council	1/26/05	Bill passed third reading, as amended (CD1, FD1/Cachola), and CR-32 (2005) adopted. Apo Y Cachola Y Dela Cruz Y Djou N Garcia Y Kobayashi Y Marshall N Okino N Tam Y

I hereby certify that the above is a true record of action by the Council of the City and County of Honolulu on this BILL.


DENISE C. DE COSTA, CITY CLERK


DONOVAN M. DELA CRUZ, CHAIR AND PRESIDING OFFICER

05-001